IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 30013 of 2005(W)

PETITIONER:

S.MADHAVIKUTTY, W/O.RAJASEKHARAN NAIR,
TC. 26/2052, ANAYARA P.O. THIRUVANANTHAPURAM.

BY ADV. SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, CO-OPERATION(C) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. REGISTRAR OF CO-OEPRATIVE SOCIETIES, THIRUVANANTHAPURAM.

3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G) THIRUVANANTHAPURAM.

4. TRIVANDRUM CO-OPERATIVE URBAN BANK LTD., NO.1959, THIRUVANANTHAPURAM, REPRESENTED BY ITS GENERAL MANAGER.

5. THE BOARD OF DIRECTORS, TRIVANDRUM, CO-OPERATIVE URBAN BANK LTD. NO. 1959, THIRUVANANTHAPURAM, REPRESENTED BY ITS PRESIDENT.

BY ADV. SRI.GEORGE POONTHOTTAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS :

EXT.P1 TRUE COPY OF SUSPENSION ORDER DT.28.1.98

EXT.P2 TRUE COPY OF DISMISSAL ORDER DT.22.8.2000

EXT.P3 TRUE COPY OF THE MEMO OF CHARGES DT.4.2.99

EXT.P4 TRUE COPY OF THE JUDGMENT IN WPC 14528/03

EXT.P5 TRUE COPY OF THE JUDGMENT IN WA NO.1816/03

EXT.P6 TRUE COPY OF THE ORDER OF R2 DT.30.09.2004

EXT.P7 TRUE COPY OF MEMO DT.13.3.98 ISSUED BY R4

EXT.P8 TRUE COPY OF THE REQUEST TO R4 DT.16.10.04

EXT.P9 TRUE COPY OF THE REQUEST TO R5 DT.16.10.2004

EXT.P10TRUE COPY OF THE REPRESENTATION TO R3 DT.20.10.2004

EXT.P11TRUE COPY OF REPRESENTATION TO R2 DT.1.11.04

EXT.P12TRUE COPY OF APPEAL FILED BY R3 DT.28.10.2004

EXT.P13TRUE COPY OF STATEMENT FILED BY THE PETITIONER DT.20.11.2004

EXT.P14TRUE COPY OF THE GO(RT)NO.214/05/CO-OP DT.29.3.2005

EXT.P15TRUE COPY OF GO(RT)NO.217/03/CO-OP.DT7.4.2003

TRUE COPY

PA TO JUDGE

K.BALAKRISHNAN NAIR , J.

Writ Petition (C) No.30013 of 2005-W

Judgment

The petitioner was an employee of the 4th respondent Society. She was dismissed from service by Ext.P2 order dated 22.08.2000 with retrospective effect from 28.01.1998, the date, on which, she was suspended from service. The allegation against her was falsification of accounts and misappropriation of bank's money. Immediately on detection of the irregularity, the petitioner remitted the entire amount. However, Ext.P3 charge sheet was served on her. An enquiry was held into the charges in which she was found guilty and based on that report, Ext.P2 dismissal order was passed. She moved the Joint Registrar, challenging Ext.P2 under Rule 176 of the Kerala Co-operative Societies Rules. The said application was allowed by the Joint Registrar. The Government affirmed the said decision of the Joint Registrar in appeal. Those orders were challenged before this Court by filing OP Nos.14488 & 14528/03. The said Original Petitions were disposed of by Ext.P4 Judgment, setting aside the orders of the Joint Registrar and the Government and also directing the Joint Registrar to reconsider the matter. The said Judgment was taken in appeal and the Division Bench of this Court, by Ext.P5 Judgment, directed the Registrar of Co-operative Societies to reconsider the matter. The Registrar, after hearing both sides, passed Ext.P6 order dated 30.09.2004, directing her reinstatement. The society

appealed. The appeal was allowed by Ext.P14 order of the Government dated 29.03.2005. This Writ Petition is filed challenging Ext.P14. According to the petitioner, since she has already remitted the loss, if any suffered by the bank, further action against her was unwarranted. The finding against her that she committed misappropriation etc., is unsustainable in law. After the closure of the argument in the appeal, from the side of the bank, an argument note was submitted. The Government placed reliance on it. Therefore, the order of the Government is vitiated by violation of the principles of natural justice. Having regard to the facts of the case, including the one that she has already retired from service, a lesser penalty would have met the ends of justice. The authorities below failed to consider the said aspect. Therefore, the petitioner prayed for quashing Ext.P14.

2. I heard the learned counsel on both sides. The learned counsel for the petitioner, apart from urging the aforementioned contentions, submitted that after 02.01.2003, only the Co-operative Arbitration Court has jurisdiction to deal with the petition filed by her. All pending proceedings should have been transferred to the Co-operative Arbitration Court by virtue of the provisions contained in Section 70B of the Kerala Co-operative Societies Act. So, the orders of the Joint Registrar and the Government are without jurisdiction. Therefore, the matter may be remitted to be reconsidered by the Co-operative Arbitration Court, it is submitted. I heard the

learned counsel for respondents 4 and 5 also. He supported the impugned order of the Government. The learned Government Pleader also was heard in the matter. That the petitioner has committed misappropriation and falsification of accounts, is a finding of fact, which cannot be disturbed by this Court. The Registrar held in favour of the petitioner, taking note of the fact that the entire amount due to the bank has been remitted. The Government rightly interfered with the said finding of the Registrar and upheld the resolution of the bank. The contentions raised by the petitioner are not sufficient to interfere with the said order. The submission of an argument note cannot be equated with the submission of document, containing adverse materials against one side. The arguments raised therein have been noticed by the Government in the impugned order. If they are unsustainable, the petitioner can point out the same before this Court. So, the contention that the principles of natural justice were violated by receiving the argument note, cannot be accepted.

3. The petitioner has chosen, not to point out the lack of jurisdiction of the Registrar or the Government before those authorities, when the matter was heard. The petitioner who took the chance before both the forums, cannot be permitted to turn round and cry about the lack of jurisdiction when the decision goes against her. This is a well settled principle in writ jurisdiction. See the decision of the Division Bench in **Trivandrum Co-operative District Wholesale Society v. Deputy**

Registrar of Co-operative Societies, Trivandrum (1975 KLT 589)**.**

3. Further, the Registrar considered the matter pursuant to the direction of the Division Bench of this Court, which is a superior court of unlimited jurisdiction. Its order cannot be treated as a void order and it cannot be ignored. If it is irregular, it has to be corrected by filing a review. Otherwise, the order can be corrected, only in appeal. As long as the Division Bench Judgment remains in force, no one can ignore that. In **Sooryanathan v. State of Kerala** (2004(1) KLT 383), this Court considered the contention regarding the maintainability of an appeal filed after the period of limitation was over, based on the directions of this Court. In the said decision, it was held as follows :

> *"Further, Ext.P3 cannot be attacked for the delay in filing appeal as the same was filed as per the directions of this Court in OP No.29809/01. The High Court is a superior Court of unlimited jurisdiction. The concept of 'court of unlimited jurisdiction' is discussed in paragraph 713 in Halsbury's Laws of England, Fourth Edition, Volume 10. It is stated therein as follows :*
>
> *"713. Limits of Jurisdiction - The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly*

shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary."

This statement of law has been quoted with approval by our Apex Court in more than one decision. The latest of them is ***M.M.Thomas v. State of Kerala*** *(2000(1) SCC 666). Therein, it was held,*

"15. In Halsbury's Laws of England (4th Edn. Vol. 10, para 713), it is stated thus :

'The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular

court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of actions and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular action.'

(Though the above reference is to English Courts, the principle would squarely apply to the superior courts in India also.).

16. Referring to the said passage and relying on the decision of this Court in ***Naresh Shridhar Mirajkar*** *(AIR 1967 SC 1), a two Judge Bench of this Court in* ***M.V.Elisabeth v. Harwan Investment & Trading (`P) Ltd*** *(AIR 1993 SC 1914) has observed thus : (AIR Headnote),*

'The High Court in India are superior courts of record. They have inherent and plenary powers. Unless expressly or impliedly barred and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction.....'.

In view of the above legal position, there is nothing wrong with the disposal of the appeal by the Government on merits, ignoring the delay. Apart from that, an order of this Court unless it is modified in appropriate proceedings like appeal or review, is binding on all parties. The concept of 'voidness' is not at all applicable to the orders of superior courts of unlimited jurisdiction as held in ***Issac v. Robertson*** *(1985 AC 9). Whatever be the legal defect contained in the order of this Court, the same will have to be obeyed. Prof. H.W.R.Wade in Administrative Law, 8th Edition, quoting the words of Lord Diplock in* ***Issacs v. Robertson*** *stated as follows :*

'The order of a superior court, such as the High Court, must also always be obeyed, no matter what flaws it may be thought to contain. Thus, a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time limit. As Lord Diplock explained :

'The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the

course of contentious litigation. Such an order is either irregular or regular. If it is irregular, it can be set aside by the court that made it upon application that court; it is regular it can only be set aside by an appellate court upon appeal if there is one to which an appeal lies.'

Therefore, I find nothing wrong in the action of the 1st respondent in entertaining the appeal and granting relief to the 4th respondent based on the direction of this Court in OP No.29809/01."

In view of the above principles, I find nothing wrong with the Registrar, hearing and deciding the petition under Rule 176 filed by the writ petitioner as per the direction of this Court.

4. Even assuming an order is passed by an authority having no jurisdiction, still, this Court need not interfere with the same if justice has been done. See the decision of the Apex Court in **Mohammed Swalleh v. IIIrd Additional District Judge (1988 (1) SCC 40)**. The relevant portion of the said Judgment reads as follows:

*"It was contended before the High Court that no appeal lay from the decision of the prescribed Authority to the District judge. The High Court accepted this contention. The High Court finally held that though the appeal laid (**sic** no appeal lay) before the District judge, the order of the Prescribed Authority was invalid and was rightly set*

aside by the District Judge. On that ground, the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But, the High Court was exercising its jurisdiction under Art.226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore, in the facts and circumstances of the case, justice has been done though, as mentioned hereinbefore technically, the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Art.226 of the Constitution, then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

In view of the above said principle, even assuming the Government acted without jurisdiction, it is unnecessary for this Court to interfere with the same.

5. The learned counsel for the petitioner pointed out that if the punishment of compulsory retirement is imposed on her, she can draw pension from the Kerala State Co-operative Pension Fund. It is a contributory pension fund, to which she has

already paid her contribution and the society has also remitted its share. I heard the learned counsel for the Bank also on this point. Having regard to the fact that the petitioner has already retired from service, the 5th respondent is directed to consider whether the punishment imposed on the petitioner could be converted as a punishment of compulsory retirement from service, within two months from the date of receipt of a copy of this Judgment.

The Writ Petition is disposed of as above.

01.12.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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